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AUTHOR Hardin, Mark; Tazzara, Patricia
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ABSTRACT

The chart and summaries provided in this monograph describe approaches to the involuntary termination of parental rights taken by a number of proposed models. Preceded by nine brief summaries, the chart compares the specific provisions of the (1) Institute of Judicial Administration/American Bar Association Standards on Abuse and Neglect (Tentative Draft 1977); (2) Katz Model Act to Free Children for Permanent Placement (1978); (3) HHS Model State Adoption Act (1980); (4) Model Dissolution of Parent-Child Relationship Act (1976); (5) RRI Guidelines for the Involuntary Termination of Parental Rights (1980); (6) Uniform Juvenile Court Act (1968); (7) Advisory Committee on Standards for the Administration of Juvenile Justice (1980); (8) National Council of Juvenile Court Judges (1976); and (9) Goldstein, Freud, and Solnit Suggestions for a Child Placement Code (1979). These models are compared on the basis of general considerations or goals and with respect to the following specific grounds and factors: the condition of the parent(s); parental conduct both before and during the child's placement; length of time the child has been out of parental custody; efforts by the state to reunify the family; the child's significant relationships; the child's preference; alternative placements; and the best interests of the child. Excerpts from the models and information about where copies of the models can be obtained are included. (RH)

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TERMINATION OF PARENTAL RIGHTS:

A Summary and Comparison of Grounds from Nine Model Acts

PLANNING FOR CHILDREN IN FOSTER CARE PROJECT

National Legal Resource Center
for Child Advocacy and Protection
American Bar Association

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Mark Hardin
Patricia Tazzara
March, 1981

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American Bar Association
National Legal Resource Center for
Child Advocacy and Protection
1800 M Street, N.W., Second Floor, South Lobby
Washington, D.C. 20036 o (202) 331-2250

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Introduction

The core issue of controversy in involuntary termination of parental rights statutes is what should be the grounds for termination--that is, what conditions must be met before termination can be ordered in a given case. There is wide diversity among termination grounds, not only among the actual state statutes but among the model acts which are summarized in this monograph. Grounds vary in specificity, complexity, and focus. Different statutes place greater emphasis on particular aspects of parental conduct, the parent-child relationship, the child's best interests, or the involvement of the child welfare agency. And while some statutes simply list several discrete grounds for termination, others apply multi-step approaches or superimpose sets of factors to be considered in particular types of cases.

The following charts and summaries are intended to capsulize and make graphic the approaches taken by a number of proposed model acts, guidelines, and standards. The reader should take note that this monograph covers only the grounds for termination, and does not include other issues, such as burden of proof, notice, rights at the termination hearing, and specific rights of unmarried fathers.

Whenever possible, the language of the act, guideline or standard is followed closely in the charts, so that meaningful comparisons of language may be made. However, abbreviations have been made where the main idea was not sacrificed.

In spite of our best efforts to clarify and summarize, it is essential that the charts and summaries be examined in conjunction with a careful reading of the models themselves, beginning at page 37.

The function of the chart is to facilitate comparison and assimilation of the specific provisions, rather than to act as a substitute for a reading of the Act. Indeed, some models, notably the HHS Model State Adoption Act, have a complex structure of grounds and superimposed factors, the interrelationship of which can only be appreciated by study of the Acts themselves.

The set of brief summaries which accompany the charts are meant to assist the reader to quickly assimilate the basic structure of the model and to identify its point of view.

Institute of Judicial Administration/American Bar Association. Standards on Abuse and Neglect Tentative Draft (1977).

The Juvenile Justice Standards Commission Model (in the 1977 Draft *Abuse and Neglect* Volume) places strong emphasis upon prompt placement of the child in a stable family relationship. The Standards specify that in certain cases, termination may occur at the initial dispositional hearing following a finding of endangerment (as defined by the Standards). 8.2(B). The reader should note that Standards for "endangerment" are quite strict compared to most state statutes.

In three situations the court is authorized, but not required to order termination at the initial hearing: (1) the child has been abandoned prior to the hearing. 8.2(B)(1).; (2) the child has been previously removed from the home, and removal is again necessary. 8.2(B)(2); or (3) there has been a prior incident of abuse, followed by a program of therapy and a subsequent act of abuse. 8.2(B)(3).

The Commentary notes that in the vast majority of cases termination will occur not at the first disposition hearing, but after the child has been in temporary placement. These Standards are distinctive in that a principal criterion for termination is a specific length of time in placement. Subject to certain exceptions, termination is mandated after six months when a child who was under age three at the time of placement cannot be returned home. Termination is mandated after one year when the child was over age three at the time of placement and cannot be returned home. Also, during the one year period there is a six month review at which the parent has the burden of proof that his/her rights should not be severed. At the six month review the court may terminate if the parent has failed to maintain contact and reasonably plan for resumption of care of the child. 8.3.

Exceptions in which termination is not ordered, apply even in cases which clearly fall within the above-outlined grounds. They focus upon the child's particular needs and preferences, and include the following situations: a child over age ten objects to termination; it would be detrimental to terminate because of the closeness of the parent-child relationship; placement with a new,

permanent family would be impractical; the child needs care in a residential treatment facility and termination is not necessary to ensure the child's opportunity for a permanent family placement; or a child is placed with a relative who does not wish to adopt. 8.4.

The exceptions are not merely weighed against the grounds supporting termination; rather, they preclude termination. When a ground for termination does exist, but an exception applies, the court must continue to review the case every six months. The six month reviews will continue until the exception no longer applies (and parental rights are terminated) or until the child is returned home.

Katz Model Act (1978)

The Katz Model Act sets out three general grounds for termination [together with a set of detailed factors to be weighed and applied in combination with each ground]. The first ground, abandonment, is established if a child is found under circumstances such that the identity or the whereabouts of the parent is unknown and has not been ascertained by diligent search and the parent does not claim the child within two months after the child is found. If abandonment has been proven, there are no additional factors to be considered. 4(a)(1), 2(a)(4)(iv).

The second ground requires that there be a previous adjudication that the child has been abused or neglected. In addition, the following factors are considered in the decision to terminate: Continuing or serious conditions or acts of the parents; the parent's emotional, mental and physical condition, including habitual use of drugs or alcohol; acts of abuse or neglect toward any child in the family, and, finally, the "repeated or continuous failure by the parents although physically and financially able, to provide the child with adequate food, clothing, shelter, and education as defined by law, or other care and control necessary for his physical, mental, or emotional health and development." 4(b).

The third ground for termination applies when the child has been out of the physical custody of the parent for more than one year, and the court finds that the conditions which led to separation still persist and are unlikely to be remedied at an early date. In determining whether the ground applies, the court considers services offered or provided to the parent to facilitate the child's return, and the performance of both parent and agency in fulfilling their obligations under the social service contract. 4(c).

Where grounds two and three apply, the *Katz Model Act* sets forth an additional set of factors to consider. These factors include the child's feelings, the child's emotional ties with birth parents, and parental efforts to facilitate the child's return home. Parental efforts include visitation and other contact with the child as well as payment for substitute care. Finally, the court must consider whether additional services would be likely to facilitate the timely return of the child. 4(d).

If sufficient grounds for termination exist, there is a second stage of analysis, disposition. In one type of situation, the court should deny termination, despite the existence of one of the above-outlined conditions. That is, when the court finds that the child would benefit from continuing the parent-child relationship, or when a child of fourteen or more objects to termination, the court does not decree termination, but instead appoints the present *de facto* parent as guardian of the child's person.

The commentary to this section indicates that the court has broad discretion, based on the best interests of the child, to decide whether or not to terminate once a ground is found to exist. 1(b), 16(a)(2).

HHS Model Act (1980)

This HHS Model Adoption Act is basically similar to the *Katz Model Act of 1978*, both in philosophy and specifics. The *HHS Act* includes three more grounds for termination, by adding a new ground and dividing abandonment into three separate grounds. Under both Acts, abandonment is conclusively presumed if when the child is found, the identity or location of the parent is unknown and has not been ascertained by diligent search and if the parent does not claim the child within two months after the child is found. 309(a)(3), 313(d)(1). The *HHS Model* adds, as a second ground, that parental rights may be terminated with respect to a child for whom no father has been identified or whose putative father has not been located within 30 days of diligent effort. 313(d)(2). The third ground is met when the putative father, within thirty days notice, has failed to file or execute either an intent to take custody of a child, a disclaimer of paternity, a relinquishment, or a petition for voluntary termination rights. 313(d)(3).

The fourth and fifth grounds are similar to the *Katz* proposals 4(b) and 4(c). A common ground for termination is a prior adjudication of abuse or neglect, including the same factors as section 4(b) of the Katz model. Also, under both models, a common ground for termination is that a child has been out of the physical custody of a parent for one year, and the conditions which led to separation persist with little likelihood of remedy. The HHS model adds that termination may be ordered when a father has not taken physical custody of the child within sixty days after an adjudication of paternity, or a mother has not taken custody of the child within 60 days of the child's birth. 313(d)(5).

When the fourth or fifth ground applies an additional set of factors must be considered. That is (as in the *Katz* Model) a second set of factors are considered along with those factors included as part of grounds 4 and 5.

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The second set of factors is taken *verbatim* from the Katz model. However, in the Katz model services and social service contracts with parents are only considered when the child has been out of the parent's physical custody for one year. In the *HHS Model*, services and service contracts may be considered under both grounds 4 and 5--when there has been a prior adjudication of abuse or neglect and when the child has been out of the physical custody of the parents for a prescribed time period.

The *HHS Model* adds a new ground, which applies when (1) the child has been out of the parent's home for three years and has established a stable relationship with a *de facto* parent, (2) the *de facto* parent has petitioned to adopt the child, and (3) the child is over age ten and wishes to be adopted. The court may then terminate even if the parent is not at fault, and does not lack present parenting ability. 313(d)(6).

The *HHS Model* also adds a third set of factors that apply to six grounds. Those include consideration of a social services professional assessment (which itself must take into account a set of factors enumerated by the statute), the benefits of the child from continuing the parent-child relationship, and the wishes of the child. 313(f), 312.

Finally, the *HHS Model* adds that the court shall not refuse to terminate in order to rehabilitate a parent or because the child is not adoptable. 313(g), 313(h).

Model Dissolution of Parent-Child Relationship Act (1976)

The *Model Dissolution of Parent-Child Relationship Act* articulates six grounds for the involuntary termination of parental rights. The first ground, abandonment, is established when the parent demonstrates an intent to forego parental rights and has not taken responsibility for the child's care or custody for six months prior to commencement of the termination proceedings. There is also a rebuttable presumption of abandonment when the identity of the parent is unknown and cannot be ascertained despite diligent searching and the parent has not claimed the child within six months of when the child is found. VII(B).

The second ground applies when placing the child in the parent's custody in the reasonable future would raise a risk of serious detriment to the child. The determination of what constitutes a sufficient risk encompasses a range of factors which are non exclusive. Parental condition is considered, including the mental or emotional illness of the parent or the abusive use of drugs or liquor. Neglect, including failure to provide basic medical and nutritional needs is a factor, as well as maintenance of unsafe or unsanitary conditions in the home. And the court may also consider the conviction of one parent for the homicide of the other as a "risk of serious detriment."

Another factor is abuse, which includes physical, psychological or sexual abuse of any child by the parent. There is a disputable presumption that a parent is responsible for any abused child in its custody. A parent is an abuser who knew or should have known that a child was being abused, and who did not make a reasonable effort to protect the child. VII(C).

The third ground applies when the parent has failed to adjust home conditions to facilitate the child's return. Specifically, this ground is established when the child is placed out of the parent's physical custody, and the parent fails for one year to adjust his conduct or condition to provide minimally adequate care for the child in the parental home. The standard of minimally adequate care is defined as the absence of a risk of substantial detriment. VII(D).

The fourth ground applies when the parent has not shown sufficient concern for the child's physical or psychological needs for a period of one year. Factors which constitute such failure or neglect include but are not limited to the following: failure to assume care and custody in the parental home; failure to make a reasonable contribution toward the costs of substitute physical care; and failure to maintain regular visitation or other contact with the child or with the child's legal or physical custodian. Incidental care, custody, visitation, and communication are to be disregarded. VII(E).

The fifth ground permits termination upon the incarceration of the parent, when the parent is serving at least a two year sentence based upon a criminal conviction and the parent is unlikely to be released in the reasonable future. VII(F).

There is a final ground for termination of parental rights of a non-custodial parent. It applies when the non-custodial parent has failed for one year to pay a reasonable portion of the child's support and maintenance, or to maintain regular visitation or other contact with the child. The court may disregard incidental visitation, communications or contributions. The first, second and fifth grounds outlined above may also be applied to the non-custodial parent. VII(G).

In addition to the grounds, the Act includes defenses to termination. The primary defense is that services were available in the community but were not offered or provided by the child caring agency. In order for the parent to assert this defense, however, two conditions must be present. First, the parent must make efforts to facilitate the child's return, including maintaining a continuing relationship with the child and making adjustments for the child's return. Second, it is necessary that the provision of services would probably have made the child's return likely in the reasonable future. IX(B).

Also, the court must consider reasonable social services in determining whether the child will receive minimally adequate care or be exposed to a substantial risk of serious detriment in the parental home. IX(C).

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Another defense to termination is that a child of thirteen or older objects; termination may not be ordered in this situation. XXI(B).

A parent's use of prayer or spiritual means for treatment cannot be considered in determining lack of minimally adequate care or conduct raising a substantial risk of serious detriment. IX(C).

It is also not a defense that maintaining the parent-child relationship may serve as an inducement for the parent's rehabilitation. IX(A).

The court may order that the child be placed in the legal custody or guardianship of an individual or child-caring agency, subject to a ninety day review. If termination is the least detrimental available alternative, a conditional decree may be ordered which becomes unconditional upon the adoptive placement of the child. Or an unconditional decree may be ordered, which immediately terminates parental rights. XXI(B).

RRI Guidelines for the Involuntary Termination of Parental Rights (1980)

The *RRI Guidelines* state two basic requirements for involuntary termination: the child cannot be returned to the parent within a reasonable time, and termination is in the best interests of the child. I(A), (B). Both requirements are spelled out in some detail.

The *Guidelines* set out five grounds which determine whether the child can be returned to the parent within a reasonable time. The grounds (indicators) may apply singly or in combination. II.

The first ground is extreme parental disinterest or lack of commitment toward the child, for a period of at least six months if the child is under three or one year if the child is over three. Factors indicating such disinterest are whether the parent has expressed intent to forego care and contacts, whether the parent left the child with others when capable of providing care, whether the parent has exercised available visitation and communication, and whether the parent left the child with others under circumstances where the parent could not be located after a diligent search. II(A)(1)-(5).

The second ground applies when the child is out of the parent's custody and the parent does not make necessary adjustments to prepare for the child's return. The failure to make adjustments must persist for six months if the child is under three and one year if the child is over three. Factors indicating failure to make adjustments include whether the parent failed to cooperate with a child care agency's reasonable plan for return of the child and whether the parent failed to eliminate behavior preventing placement of the child with the parent. Behavior in this category includes maintenance of dangerous household conditions, living with others who would endanger the child, violent parental behavior which would endanger the child, and erratic or bizarre parental behavior which would endanger the child. II(B)(1)-(2).

The third ground is parental conduct which caused serious harm or danger to the child or his siblings, and which makes return of the child an unacceptable risk. Factors indicating such behavior and risk include whether conduct occurred repeatedly or over a long period of time; whether conduct persisted in spite of reasonable assistance of social agencies; whether there is no substantial change in parental conditions, attitudes and behavior connected with such conduct; and the severity of harm or danger to the child or his siblings. II(C)(1)-(4).

The fourth ground is that the parent has a diagnosable condition unlikely to change within a reasonable time, which makes the parent unlikely to assume minimally acceptable care of the child. Such diagnosable conditions include alcohol or drug addiction, mental deficiency, mental illness, emotional illness, or extreme physical incapacitation. II(D).

The fifth ground is that the child has deep antipathy toward the parent, or the parent-child relationship has substantially eroded, in part because of the parent's abuse, serious neglect, long and unreasonable absence, unreasonable failure to visit, or prolonged imprisonment. The antipathy or deterioration of the relationship must be serious enough to make it likely that the child would be seriously harmed if placed with the parent. II(E).

The *Guidelines* employ the above grounds as indicators that a child cannot be placed with the parent within a reasonable time. The assumption is that the impracticality of placing the child with the parent is the primary basis for termination. Accordingly, the *Guidelines* are not intended to apply to termination proceedings where the possibility of placement is irrelevant because the child is already in the permanent custody of one parent. That is, the *Guidelines* do not apply to step-parent adoption cases (adoption by the spouse of a parent having custody) or cases where a parent having custody seeks to terminate visitation or other rights of the non-custodial parent. Rather, the *Guidelines* contemplate that those situations require separate statutory treatment.

Once it is determined that the child cannot be placed with the parent within a reasonable time, the court must determine whether termination is in the best interests of the child. The court must consider permanent placement alternatives such as individual legal custody and guardianship, which end agency custody and supervision, but which do not require termination. III.

Termination is determined to be in the best interest of the child, as opposed to another permanent placement alternative, unless the court finds that termination of all parent-child contacts is not necessary for the emotional well-being of the child and that the child can be assured of a good opportunity to be fully integrated into a substitute home without termination. IV(A)-(B).

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Uniform Juvenile Court Act (1968)

The Uniform Juvenile Court Act, Section 47, states brief grounds for the termination of parental rights, and provides for a termination proceeding separate from the adoption hearing.

The Act sets forth two grounds for termination. The first ground is abandonment of the child by the parent. Abandonment is not defined.

The second ground applies to a child who has been adjudicated to be deprived. A "Deprived Child" is a child who has been (i) without proper care, control, subsistence, or education as required by law, or other care or control necessary to child's health or morals, and deprivation not due to financial circumstances of parent; (ii) has been placed for care or adoption in violation of law; (iii) has been abandoned.

The second ground further requires that the conditions and causes of the deprivation be likely to continue and therefore the child is suffering serious physical, mental, moral, or emotional harm.

Standards for the Administration of Juvenile Justice (1980)

The National Advisory Committee Standards include four grounds for the involuntary termination of parental rights.

The first ground is abandonment, which applies to juveniles who are unable to provide for themselves and who have no parent, guardian, relative or other adult with whom they have substantial ties and who are willing to provide supervision and care. 3.185(a), 3.113(a).

The second ground is physical abuse, which applies to juveniles who have suffered or are likely to suffer physical injury inflicted non-accidentally by their parent, guardian or primary caretaker and which causes a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm. 3.185(b), 3.113(b).

The third ground is that the juvenile has been removed from home (pursuant to other specified standards for intervention and removal) and has remained in out-of-home placement for six months or more. 3.185(c), 3.184, 3.113.

The fourth ground for termination is that the juvenile's parents have previously been found to have neglected or abused the juvenile or another juvenile in the same household. 3.185(d).

The third and fourth grounds, Standards 3.185(c) and (d), reflect the policy that time should be provided for services and counselling in order to return the child to the parent's home. The policy has no application to the first ground, abandonment of the child, and while termination under the third ground (physical abuse) is possible after a single finding of abuse, the Commentary notes that termination with no previous record of neglect or abuse and with no previous removal of the child is expected to be exceedingly rare. pp. 346-347.

In addition to the four grounds, which authorize, but do not require the court to terminate parental rights, there are several exceptions. When the exceptions apply, parental rights should not be terminated. The exceptions are the situations when termination would be detrimental to the juvenile because of the closeness of the parent-child relationship; when the juvenile opposes termination; when the juvenile is placed in a residential treatment facility because of physical or mental health problems and termination is unnecessary to secure a permanent family home; when the juvenile has been placed with a relative who does not want to adopt; and when the juvenile cannot be placed in a family environment. 3.185.

National Council of Juvenile Court Judges Termination of Parental Rights Statute (1976)

The National Council of Juvenile Court Judges *Termination of Parental Rights Statute* includes one brief ground for termination, abandonment, and three other detailed grounds. The three other grounds are elucidated and supplemented by the same additional factors.

Abandonment is established when a child is left under circumstances such that the identity of the parents is unknown and cannot be ascertained and the parent has not come forward to claim the child within three months after the child is found. 12(4).

The three other grounds are unfitness of the parent; parental condition unlikely to change in the foreseeable future rendering the parent unable to properly care for the child; and parental conduct unlikely to change in the foreseeable future, rendering the parent unable to properly care for the child. 12(1).

A list of non-exclusive factors to be considered in determining unfitness: parental conduct or parental condition include emotional or mental illness or mental deficiency of the parent; cruel or abusive conduct toward the child; excessive use of liquor or drugs; neglect of the child; conviction and imprisonment for a felony; unexplained injury or death of a sibling; and reasonable but unsuccessful assistance by child caring agencies. 12(1)(a)-(g).

There are several additional factors to be weighed when the child is out of the physical custody of the parent. The court shall then consider, along

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with the above factors, the parent's failure to provide care or pay for substitute physical care; failure to maintain regular visitation as part of a plan to reunite child and parent; failure to maintain consistent contact or communication with child; and lack of effort to adjust home circumstances, conduct or condition. 12(2)(a)-(d).

When a child is in foster care, the court must take into account an important additional consideration--whether the child has been integrated into the foster family, to the extent that his familial identity is with the foster family and whether the foster family is willing to permanently integrate the child. The *Statute* lists a number of specific factors which attempt to define the child's familial identity by comparing the parent-child relationship with the foster parent-child relationship. Also included as factors are length of time in stable placement, the reasonable preference of the child, and any other issues which the court finds relevant. 12(3)(a)-(i).

Goldstein, Freud & Solnit
Suggestions for a Child Placement Code (1979)

In Article 30, of the *Suggestions for Some Provisions of a Child Placement Code,* Goldstein, Freud & Solnit offer seven grounds for involuntary state intervention into the parent-child relationship. These grounds define circumstances in which a state may investigate, modify or terminate the legal relationship between parent and child. While intervention encompasses termination in an appropriate circumstance, the goal is minimal state intrusion. In any case in which termination is a potential disposition, the state must demonstrate that no less intrusive measure would achieve the same result. Even if termination is otherwise appropriate, the state may not order termination unless it can provide the child with a better family situation than it has with its parents. 20.3, 20.4, 10.8.

The first ground for involuntary state intervention is abandonment. An abandoned child is one whose parent has died or disappeared without making provision for her care. 30.5. This Standard recognizes that it is the child's needs, and not the parent's intent which established a cause for intervention. Thus, a parent who provides alternative arrangements for the child's care will not be in danger of losing parental rights. 30.5, Commentary, p. 60.

The second ground for intervention is also a standard for disposition. The second ground is established when a Longtime Caretaker requests to become the child's parent or refuses to turn the child over to his parents or to a state agency. A "Longtime Caretaker" is an adult who has had continuous care of the child for one year or more if the child was less than three at the time of placement, or two years or more if the child was three years old or older at the time of placement.

When the request or refusal occurs, the court is instructed to designate the Longtime Caretaker as adoptive parent or foster parent with tenure, if the Longtime Caretaker does not wish to adopt. 30.9, 10.5, 10.12.

An exception applies if the child was over five at the time of placement and was in the absent parent's care for at least the three preceeding years, and if the child's separation was not the result of parental abuse (grounds three and four). If the exception applies the parent may demand a hearing at which the court will terminate parental rights only if the Longtime Caretaker is the Psychological Parent.* 30.9.

The third and fourth grounds for intervention involve child abuse. The third ground is sexual abuse of a non-violent nature. Intervention, including possibly termination, is mandated when a parent has been convicted, or acquitted by reason of insanity, of a sexual offense against a child. 30.6.

The fourth ground for intervention applies when a parent inflicts physical injury, attempts to inflict injury, or repeatedly fails to prevent the child from receiving such injury. 30.7.

The next two grounds for involuntary state intervention deal with child neglect. The Commentary points out that such standards as "denial of proper care" or "serious emotional damage" are too vague to warrant state intervention. Therefore, acts which may be placed in the neglect category are those which concern failure to comply with a specific medical procedure or child protection law.

The fifth ground is that a parent has refused a form of medical treatment for the child when such treatment is appropriate and non-experimental; when denial of such treatment will result in death; and when treatment is expected to result in a chance for normal growth or a life worth living. Refusal of the parents to comply with generally applicable child immunization, education or labor laws is also a form of neglect requiring state intervention to enforce compliance with the specific provision. 30.8, 30.1. Commentary, p. 74.

The final ground for intervention (which is not included in the chart) is the commission by a child of an offense which would be criminal if committed by an adult. 30.2.

*A psychological parent is one who on a continuing, day to day basis, through interaction, companionship, interplay and mutuality, fulfills the child's psychological needs for a parent as well as the child's physical needs. 10.3, *Provisions for a Child Placement Statute. Beyond the Best Interests of the Child* (Free Press, 1979).

TERMINATION OF PARENTAL RIGHTS:

A Summary and Comparison of Grounds from Nine Model Acts

Comparison of Grounds for the Involuntary Termination of Parental Rights

	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT 1977)	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
GENERAL CONSIDERATIONS OR GOALS	To end long term, unstable foster placements by returning child home or freeing child for adoption within one year. Commentary, p. 149.	To provide prompt procedures for freeing minor children from the custody and control of their parents. But whenever possible and appropriate, the birth family relationship shall be recognized, strenghtened and preserved. 1.
SPECIFIC GROUNDS AND FACTORS TO BE CONSIDERED		
A. Parental Condition		Parental condition is taken into account only if there has been a prior adjudication of abuse or neglect. 4(b).
1. Mental Condition		Emotional illness, mental illness, or mental deficiency rendering parent consistently unable to care for the immediate and on-going physical or psychological needs of the child for extended periods. 4(b)(1).
2. Alcohol or Drug Abuse		Use of alcohol or controlled substances rendering parent consistently unable to care for immediate and on-going physical or psychological needs of child for extended periods. 4(b)(1).
B. Parental Conduct While Child not in Placement	The following are criteria for termination at the initial disposition hearing following a finding that child is endangered. (See [illegible] for certain exceptions, when termination should not be ordered). The court is authorized, but not required to terminate at the initial disposition if following criteria are met and no exception applies.	
1. Abandonment	When a child has not been cared for or contacted for sixty days prior to hearing and despite adequate efforts to notify, parents do not appear at the adjudicatory or dispositional hearing. 3.2(B)(1).	Conclusively presumed if identity and whereabouts of parents unknown and not ascertained by diligent searching and parent does not claim child within two months after child is found. 4(a)(1), 2(a)(4)(iv).

HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
Court should consider both the best interests of the child and parental conduct indicating unfitness or noninvolvement. Both factors must weigh in favor of termination. Comment to 313(d), (e), (f).	The relationship between parent and child should be strengthened and supported and not lightly interfered with by the State, but where a breakdown in the family has occurred, the well-being of the children may require judicial intervention. I(B). The goal of securing the least detrimental available alternative for the child shall prevail over any conflicting rights of the parent. VIII.	Termination is proper when the child cannot be placed in the parent's home in a reasonable length of time and termination is in the best interests of the child. 1(A), (B).
Parental condition is taken into account only if there has been a prior adjudication of abuse or neglect. 313(d)(4).	Parental condition is a factor in determining whether placing the child in parent's custody would raise a substantial risk of serious detriment to the child. VII(C)(1), VII(C)(3).	
Emotional illness, mental illness or mental deficiency rendering parent unable to care for physical or psychological needs of the child. 313(d)(4)(A).	Mental or emotional illness or mental deficiency of parent. VII(C)(1).	Parent has a diagnosable condition of mental deficiency, mental illness or emotional illness, unlikely to change within a reasonable time, which makes parent unlikely to assume minimally acceptable care of child. II(D).
Use of alcohol or controlled substances rendering parent unable to care for physical or psychological needs of child. 313(d)(4)(A).	Abusive use of intoxicating liquor or narcotic or dangerous drug. VII(C)(3).	The parent has a diagnosable condition of alcohol or drug addiction, unlikely to change within a reasonable time, which makes parent unlikely to assume minimally acceptable care of the child. II(D).
Abandonment conclusively presumed if identify or location of the parent is unknown and not ascertained after diligent searching and parent does not claim within two months after child is found. 309(a)(3), 313(d)(1).	Statement or conduct evidencing settled intent to forego parental rights and failure for six months prior to filing of petition to assume responsibility for care and custody of the child. VII(B).	Parent has shown extreme disinterest or lack of commitment toward the child for six months if the child is under three or one year if the child is over three, taking into account: (1) whether parent has left child in others care under circumstances in which parent's identity or whereabouts could not

	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT) 1977	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
1. Abandonment Continued		
2. Abuse	Child previously removed from home for protection from endangerment (as defined by Standards) and after return must be removed again. 8.2(B)(2).	Previous adjudication of abuse or neglect and continuing or serious acts of abuse toward any child in the family. 4(b)(2).
	Child has been physically abused, and this child or another in the family has been endangered previously, if parents have received therapy after first instance of abuse. 8.2(B)(3).	
3. Neglect	Child previously removed from home for protection from endangerment (as defined by Standards) and after return must be removed again. 8.2(B)(2).	Previous adjudication of abuse or neglect and continuing or serious acts of neglect toward any child in the family. 4(b), (b)(2).
		Previous adjudication of abuse or neglect, with repeated or continuous failure by the parents, although physical and financially able, to provide the child with adequate food, clothing, shelter and education as defined by law, or other care and control necessary for his physical, mental, or emotional development, notwithstanding religion. 4(b), (b)(3).
4. Conviction of a Felony or Imprisonment		

HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
No father has been identified or putative father has been located within thirty days after diligent effort. 311(b), 313(d)(2).	Disputable presumption of abandonment if child found under circumstances such that identity of parent unknown and cannot be ascertained despite diligent searching and parent has not come forward to claim child for six months. VII(B).	be ascertained after diligent searching, (2) whether parent has expressed the intent to permanently forego care and contacts with child, (3) whether parent has left child in others' care for prolonged periods when capable of caring for child, (4) whether parent has substantially failed to exercise available visitation or communicate with the child, and (5) whether parent has substantially failed to communicate with child. II(A).
Putative father, within thirty days of notice, has failed to file or execute an intent to take custody, a disclaimer of paternity, a relinquishment, or a petition for voluntary termination. 313(d)(3).		
Previous adjudication of abuse or neglect and acts of abuse toward any child subsequent to the adjudication. 313(d)(4)(B).	Physical, psychological or sexual abuse of any child is a factor in determining whether placing child in parent's custody would raise a substantial risk of serious detriment to the child. VII(C)(2).	Parent's conduct caused serious harm or danger to child or siblings, which makes return of child an unacceptable risk, based on: frequency and duration of conduct, severity of harm, and continuation of conduct despite diligent agency efforts to assist parent. II(C).
	Disputable presumption that parent is responsible for abuse of any child in his custody. Includes failure of parent who knew or should have known that his child was being abused to take reasonable action to protect the child. VII(C)(2).	**See also B3, below.**
Previous adjudication of abuse or neglect and acts of neglect toward any child subsequent to adjudication. 313(d)(4)(B).	Neglect of any child which may include, but is not limited to, failure to provide for the child's basic medical and nutritional needs. Such neglect is a factor in determining whether placing child in parent's custody would raise a substantial risk of serious detriment to the child. VII(C)(4).	Parent's conduct caused serious harm or danger to child or siblings, which makes return of child an unacceptable risk, based on: frequency and duration of conduct, severity of harm, and continuation of conduct despite diligent agency efforts to assist parent. II(C).
Previous adjudication of abuse or neglect and repeated or continuous failure to provide adequate food, shelter, clothing or education as defined by law, or other care and control necessary for physical, mental and emotional growth, notwithstanding religion. 313(d)(4)(c).	Routine maintenance of unsafe or unsanitary conditions is evidence that placing child in parent's custody would raise a substantial risk of serious detriment to the child. VII(C)(5).	**See also B4, below.**
	Conviction of a parent for the homicide of the other parent is a factor in determining whether placing child in parent's custody would raise a substantial risk of serious detriment to the child. VII(C)(6).	Child has extreme antipathy toward parent or there has been substantial erosion of parent-child relationship, caused in part by serious neglect, serious abuse; or prolonged imprisonment, which makes it likely that child would be seriously harmed if placed with parent. II(E).
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	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT 1977)	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
4. Conviction of a Felony or Imprisonment Continued		
C. Parental Conduct While Child is in Placement	Explicit standards for parental conduct while child is in placement apply only at the initial six month review for a child over three at time of placement.	Parental conduct while child is in placement is considered when there has been a prior adjudication of abuse or neglect, or when child has been out of parent's physical custody for one year. 4(b), 4(c).
1. Payment for Portion of Cost of Care		Payment of reasonable portion of substitute physical care if financially able to do so. The court may attach little or no weight to incidental contributions. 4(d)(2)(ii), 4(e).
2. Maintenance of Regular Contacts with Child	Parents have failed to maintain contact with the child and to reasonably plan for resumption of care of the child. 8.3(B).	The extent to which regular visitation or other contact with the child has been maintained. The court may attach little or no weight to incidental visitations or communications. 4(d)(2)(i), 4(e).
3. Adjustment of Home Conditions	Parents have failed to reasonably plan for resumption of care of child. 8.3(B).	Effort the parent has made to adjust his circumstances, conduct or conditions to make it in the child's best interest to return home including whether additional services would be likely to bring about lasting parental adjustment enabling return of the child. 4(d)(2)(iv).

HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	ARI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
	Parent is incarcerated in a penal institution and is serving a sentence of not less than two years of which not less than one year remains to be served, and parent unlikely to be released within the reasonable future. VII(F).	
Parental conduct while child is in placement is taken into account when there has been a prior adjudication of abuse or neglect or when child has been out of parent's custody for a specified length of time. See D. 313(e).		
Payment of reasonable portion of care if able to do so. 313(e)(4)(B).	Failure by parent to pay reasonable portion of substitute care for a period of one year, based on ability to pay is a factor in determining whether parent failed to meet child's basic physical or psychological needs for one year. VII(E)(2).	
Maintenance of regular visitation or other contact as part of a plan to reunite child with parent. 313(e)(4)(A).	Failure by parent to maintain regular visitation or other contact with child for one year as part of a plan reasonably calculated to reunite child with parent is a factor in determining whether parent failed to meet child's basic physical or psychological needs for one year. VII(E)(3).	See B 1.
Effort parent has made to adjust circumstances to make it in child's best interest to return home, including whether additional services would be likely to bring about lasting parental adjustment enabling return of the child. 313(e)(4)(D).	Parent fails for one year to adjust his circumstances, conduct or condition to provide minimally adequate care. Parent unlikely to do so in reasonable future. VII(D).	Failure to make adjustments to prepare to care for the child for six months if child is under three or one year if child is over three, where agency made diligent efforts to assist parent. Failure to eliminate parental behavior preventing placement with parent, such as maintaining household conditions, continuing violent behavior likely to occur in the presence of the child, or living with others who endanger the child. II(B)(1)-(2).

	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT 1977)	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
4. Adherence to Terms of Social Service Contract		Court shall also consider services offered or provided to parent, social service contract between parent and agency, and extent to which parties fulfilled contract. 4(c)(2).
5. Maintenance of Communication with Child's Custodian		Maintenance of regular contact with legal or other custodian. 4(d)(2)(iii).
D. Length of Time Child Has Been Out of Parent's Custody	Subject to exceptions below (See F-H): child under three at time of placement has been in placement for six months, if child cannot be returned home at that time; child over three at time of placement has been in placement for one year, if child cannot be returned home at that time. See C2 for standard when child over three at time of placement has been in placement for six months. 8.3(A), (B).	When a child has been out of physical custody of parent for more than one year and court finds (i) conditions which led to separation persist; (ii) little likelihood that conditions will be remedied at early date; and (iii) continuation of parent-child relationship diminishes child's prospect for early integration into a permanent family. 4(a)(3). Court shall also consider services offered or provided to parent, social service contract between parent and agency, and extent to which parties fulfilled contract. 4(c)(2).
E. Efforts By State to Reunify Family	Child has been physically abused and this child or another in the family has been endangered previously if parents have received therapy after first instance of abuse. 8.2(B)(3).	In a situation in which child has been out of the parent's physical custody for more than a year, court shall consider timeliness, nature and extent of services offered or provided by agency to facilitate reunion. 4(c)(1). In situation where there has been a prior adjudication of abuse or neglect or when child has been out of the parent's physical custody for more than one year, the court shall consider whether additional services would be likely to bring about a lasting parental adjustment, facilitating return of the child. 4(d)(2).

HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
Terms of social service contract and extent to which all parties have fulfilled obligations thereunder. 313(e)(2).	Failure by parent to maintain regular visitation or other contact for one year as part of a plan reasonably calculated to reunite child with parent is a factor in determining whether parent failed to meet child's basic physical or psychological needs for one year. VII(E)(3).	Failure for six months if child is under three or for one year if the child is child over three, to cooperate with child care agency in formulation and implementation of a plan reasonably designed to effect the placement of the child with parent. II(B)(1).
Maintenance of regular contacts with the legal or other custodian. 313(e)(4)(c).	Failure by parent to maintain regular contact with physical or legal custodian for one year is a factor in determining whether the parent failed to meet the child's basic physical or psychological needs for one year. VII(E)(4).	
The child has been out of the physical custody of the parent for one year, the father has failed to take physical custody of the child within sixty days after an adjudication of paternity, or the mother has failed to take physical custody within sixty days of birth and (A) conditions which led to the separation persist; (B) there is little likelihood that those conditions will be remedied at an early date; and (C) continuation of the legal parent-child relationship diminishes the child's prospect for early integration into a permanent family. 313(d)(5). Child has been out of physical custody of parent for three years; child has developed emotionally stable relationship with *de facto* parent; *de facto* parent has petitioned to adopt child; and child is over age ten and wishes to be adopted by the *de facto* parent. 313(d)(6).	Parent fails for one year to adjust his circumstances, conduct or condition to provide minimally adequate care. Parent unlikely to do so in reasonable future. VII(D).	**See B1, C3, C4.**
When there has been a prior adjudication of abuse or neglect or child has been out of parent's custody for one year, court shall consider the timeliness, nature and extent of services offered or provided to the parent, 313(e)(1), and the terms of any social service contract, and the extent to which the parties have fulfilled their obligations under the contract. 313(e)(2).	If child is committed to child care agency and parent has made reasonable efforts to adjust circumstances for child's return, parent may raise as defense the failure of the agency to provide social services which were likely to have facilitated return of child in a reasonable time. IX(B).	**See B2, C3, C4.**

	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT) 1977	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
F. Significant Relationships		
1. Parents	No termination if, because of closeness of parent-child relationship, it would be detrimental to child to terminate. 8.4(A).	Child's feelings and emotional ties with his birth parents are considered, along with other factors. 4(d)(1).
2. Foster Parents		Relationship with foster parent not considered *per se* as ground for termination, but foster parent who has had continuous physical custody for one year and with whom the child has developed significant emotional ties can petition for termination. 2(a)(15), 8(b)(4).
G. Child's Preference	No termination if child over ten objects. 8.4(E).	**See** 11.
H. Alternative Placements	No termination if child is placed with relative who does not wish to adopt. 8.4(B). No termination if due to the nature of child's problem, child is in residential treatment facility and continuation of parental rights will not prevent finding a permanent family placement for the child. 8.4(C). No termination if child cannot be placed permanently in family environment (e.g., child unwilling to accept permanent placement or no home available) and failure to terminate will not impair child's opportunity for permanent family setting. 8.4.	If grounds for termination are otherwise met; if child has developed significant emotional ties with person(s) who has had continuous physical custody of the child for more than one year (*de facto* parent), and if (i) child would benefit from continued parent-child relationship or (ii) child is fourteen or more and objects to termination: the court shall order that a long term or permanent home be provided by appointing the present *de facto* parent as guardian of the child's person. 2(a)(15), 16(a)(2). **See also** I.

HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
The feelings and emotional ties between child and parent are considered along with other factors. 313(e)(3).		Extreme antipathy by child toward the parent or substantial erosion of child-parent relationship, caused in part by parent's misconduct. Child likely to be seriously harmed if placed in parental home. II(E). Termination is in best interest of child when ending all parent-child contacts is necessary for child's emotional well-being. IV(A).
Child has been out of physical custody of parent for three years; child has developed emotionally stable relationship with a *de facto* parent; *de facto* parent has petitioned to adopt the child; and child is over age ten and wishes to be adopted by *de facto* parent. 313(d)(6).		Termination in best interest of the child when it is the only effective way to ensure a good opportunity for child to be fully integrated into a substitute home. IV(B).
Court shall consider wishes of the child regarding termination of the legal parent-child relationship. 313(f)(3). **See also F2, above.**	No termination if child of thirteen or older objects. XXI(B)(4).	Only insofar as the preference of the child relates to the best interests of the child. **See I.**
	Where it is the least restrictive alternative for the child, court shall sever parental control over the child, award custody and guardianship of child to appropriate person or child-caring agency, and regulate, in manner least detrimental to the child, the relationship between the child and parent. XXI(B)(1). Court shall enter conditional decree of termination where court cannot determine whether an adoptive placement is available. XXI(B)(3).	Alternative permanent placements not involving continued agency custody and supervision shall be considered if termination is not in the best interests of the child. III.

	INSTITUTE OF JUDICIAL ADMINISTRATION AMERICAN BAR ASSOCIATION STANDARDS RELATING TO ABUSE AND NEGLECT (TENTATIVE DRAFT 1977)	KATZ MODEL ACT TO FREE CHILDREN FOR PERMANENT PLACEMENT (1978)
I. Best Interests of the Child		An order for termination shall be made when it is in the child's best interests in light of the specific grounds for termination. 4(a). Best interests of the child shall prevail when in conflict with parental rights. 1(b)(4), 4(a).
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HHS MODEL STATE ADOPTION ACT (1980)	MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT (1976)	RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS (1980)
Court must find that termination is in best interests of child in light of the specific grounds. 313(d). Commentary to Section 313, under heading *Best Interests of the Child.* Court shall consider whether maintaining parent-child relationship benefits child, including contact between child and persons of his own racial, ethnic, cultural, or biological heritage. 313(f)(2).	Court must find both that a specific ground for termination exists and that termination is the least detrimental alternative, maximizing the child's opportunity for a continuous, unconditional and permanent adult caretaker. XXI(B), III(G).	Termination is proper only when the child cannot be placed in the parent's home in a reasonable length of time and termination is in the best interests of the child. 1(A), (B). Termination is in the best interests of the child when ending all contacts with the parent is necessary for the child's emotional well-being or when termination is the only effective way to assure the child's integration into a substitute home. IV.
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	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
GENERAL CONSIDERATIONS OR GOALS	To provide a procedure whereby adoption proceedings may be completely divorced from those ending the rights of the parents, where those interested in adoption so desire. Commentary to 47.	To provide a means of termination separate from and prior to adoption, also subsequent to a finding of abuse or neglect. Commentary p. 346. To protect the juvenile while causing as little interference as possible with family autonomy. 3.184.
SPECIFIC GROUNDS AND FACTORS TO BE CONSIDERED		
A. Parental Condition	There are two grounds for involuntary termination of parental rights. Specific grounds and factors listed in the left margin are included only to the extent that they are encompassed by the following language: "The parent has abandoned the child." 47(a)(1). "Child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm." 47(a)(2).	
1. Mental Condition		
2. Alcohol or Drug Abuse	"Deprived child" includes a child who (i) is without proper parental care, subsistence, education or other care necessary for his physical, mental, emotional health or morals and the deprivation is not due primarily to lack of financial means of his parent; (ii) has been placed for care or adoptiion in violation of the law; (iii) has been abandoned by his parents. 2(5).	
B. Parental Conduct While Child not in Placement		
1. Abandonment	The parent has abandoned the child. 47(a)(1).	Juveniles who are unable to provide for themselves and who have no parent, guardian, relative, or other adult with whom they have substantial ties, willing and able to provide supervision and care. 3.185(a), 3.113(a).

ATIONAL COUNCIL OF JUVENILE COURT UDGES (1976)	GOLDSTEIN, FREUD, SOLNIT SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
Acknowledge that time perception of children differs from adults. Provide stability for children removed from their home. Make the ongoing needs of a child for proper physical, mental and emotional growth the decisive considerations. 1	Goal of intervention is to maintain, establish, or re-establish for the child a permanent placement in a family with autonomous parents. 10.13.
Court may terminate parental rights if parent is unfit or on basis of parental condition which renders the parent unable to properly care for the child, in the foreseeable future. 12(1).	The following are grounds for state intervention. Once the grounds are found to exist, termination shall be ordered if necessary to effect the least detrimental available placement. 20.3, 10.8.
Emotional illness, mental illness or mental deficiency of such nature as to render parent unlikely to care for ongoing physical, mental and emotional needs of child. 12(1)(a).	
Excessive use of intoxicating liquors or narcotic or dangerous drugs. 12(1)(c).	
Parent has abandoned child or child left under circumstances such that parent's identity is unknown and can not be ascertained despite diligent searching and parents do not claim within three months of the finding of child. 12(4).	Death or absence of both parents, or the only parent, when coupled with their failure to make provision for child's custody or care. 30.5.

	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
2. Abuse	Child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm. 47(a)(2). "Deprived child" includes a child who (i) is without proper parental care, subsistence, education or other care necessary for his physical, mental, emotional health or morals and the deprivation is not due primarily to lack of financial means of his parent; (ii) has been placed for care or adoption in violation of the law; (iii) has been abandoned by his parents. 2(5).	Juveniles who have suffered or are likely to suffer physical injury inflicted nonaccidentally by their parent, guardian, or primary caretaker, which causes or creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm. 3.185(b), 3.113(b). Because of policy of trying to protect child without removal, (Standard 3.184) termination in abuse cases where the parent has no record of previous neglect or abuse, and in which juvenile has not been removed, is expected to be exceedingly rare. Commentary pp. 346-347. Juvenile's parents have previously been found to have neglected or abused that juvenile or another juvenile in the same household. 3.185(d). **See also D.**
3. Neglect	**See B2 above.**	Juvenile's parents have previously been found to have neglected or abused that juvenile or another juvenile in the same household. 3.185(d). **See B2, Paragraph 2, (above) and D.**
4. Conviction of a Felony or Imprisonment		

NATIONAL COUNCIL OF JUVENILE COURT JUDGES (1976)	GOLDSTEIN, FREUD, SOLNIT, SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
Conduct of a physically, emotionally or sexually cruel or abusive nature is a factor in determining whether parent is unfit or whether parent's conduct or condition renders him unable to properly care for child. 12(1)(b).	Parent's conviction, or acquittal by reason of insanity, of a sexual offense against the child. 30.6.
Unexplained injury or death of a sibling is a factor in deciding whether parent is unfit or whether parent's conduct or condition renders him unable to properly care for child. 12(1)(f).	Serious bodily injury inflicted by parents upon their child, or an attempt to inflict, or repeated failure of parents to prevent such injury. 30.7.
Physical, mental or emotional neglect is a factor in determining whether parent is unfit or whether parent's conduct or condition renders him unable to properly care for child. 12(1)(d).	Refusal of parents to comply with generally applicable immunization, education and labor laws. 30.1.
	Refusal to authorize medical care when (1) experts agree that the treatment is appropriate and non-experimental; (2) denial will result in death; and (3) treatment expected to result in chance for normal growth or a life worth living. 30.8.
Conviction of felony and imprisonment is a factor in determining whether parent is unfit or whether parent's conduct or condition renders him unable to properly care for child. 12(1)(e).	See B2, Paragraph 1.

	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
C. Parental Conduct While Child is in Placement	Only to the extent encompassed in the following language: "Child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm." 47(a)(2).	Nothing explicit in statute, but Commentary emphasizes importance of allowing time for parent to adjust home conditions before termination is considered. Commentary, p.346.
1. Payment for Portion of Cost of Care	"Deprived child" includes a child who (i) is without proper parental care, subsistence, education or other care necessary for his physical, mental, emotional health or morals and the deprivation is not due primarily to lack of financial means of his parent; (ii) has been placed for care or adoption in violation of the law; (iii) has been abandoned by his parents. 2(5).	
2. Maintenance of Regular Contacts with Child		
3. Adjustment of Home Conditions	**See above.**	
4. Adherence to Terms of Social Service Contract		

NATIONAL COUNCIL OF JUVENILE COURT JUDGES (1976)	GOLDSTEIN, FREUD, SOLNIT, SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
Where child is not in physical custody of parent, court shall consider conduct while child in placement in addition to unfitness, conduct, and condition while child not in placement. See A and B.	
Failure to pay a reasonably portion of substitute care. 12(2)(a).	
Failure to maintain reasonably consistent contact, and/or communication. 12(2)(c).	
Lack of effort of parent to adjust circumstances, conditions, or conduct to meet needs of child. 12(2)(d).	
Failure to maintain visitation or other contact as designed in plan to reunite parent and child. 12(2)(b).	

	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
5. Maintenance of Communication with Child's Custodian		
D. Length of Time Child Has Been Out of Parent's Custody		Juvenile has been removed from home as a result of a finding that he is abused or endangered as defined in Standard 3.113; there is evidence that he cannot be adequately protected from further neglect or abuse; out-of-home placement is less likely to be damaging than allowing juvenile to remain with his family; and the juvenile has remained in out-of-home placement for six months or more. 3.185(c), 3.184.
E. Efforts By State to Reunify Family		Termination grounds do not include a requirement of state efforts to reunify family, but the commentary states that in cases where there is no previous record of abuse or neglect and child has not previously been removed, the court should allow time for counselling and services to relieve the causes of abuse or neglect Commentary, p. 246. Court can order counselling, services, therapy, supervision and treatment. 3.184.

NATIONAL COUNCIL OF JUVENILE COURT JUDGES (1976)	GOLDSTEIN, FREUD, SOLNIT, SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
See F2, Factor (d).	Request by an adult to become the child's parent, where adult is child's "Longtime Caretaker", (*i.e.*, has cared for the child for one year or more if child was under three, two years or more if child was three or older at time of placement). Longtime Caretaker can be designated as adoptive parent unless absent parent demands and is eligible for hearing based on the following: child was over five at time of placement; child has been in continuous care of parent for at least the three preceeding years; and child was not separated because of infliction of serious bodily injury or sexual abuse (as defined in B2). Longtime Caretaker may also adopt if, at hearing, court determines that Longtime Caretaker is psychological parent. See F1 for definition of psychological parent. Longtime Caretaker may, in any case, choose to become foster parent with tenure rather than to adopt. 30.9, 10.5, 10.12.
Reasonable and unsuccessful efforts by agencies to rehabilitate family are considered in determining whether parent is unfit or whether parent's conduct or condition renders him unable to properly care for child. 12(1)(g).	

	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
F. Significant Relationships		
1. Parents		No termination if it would be detrimental to the juvenile because of the closeness of the parent-child relationship. 3.185.
2. Foster Parents		
G. Child's Preference		No termination if the juvenile objects. 3.185.
H. Alternative Placements		No termination if juvenile has been placed with a relative who does not wish to adopt. 3.185. No termination if juvenile has been placed in a residential facility because of his or her physical or mental health problems and termination is not necessary to provide a permanent family home. 3.185. No termination if the juvenile cannot be placed in a family environment. 3.185.

ATIONAL COUNCIL OF JUVENILE COURT UDGES (1976)	GOLDSTEIN, FREUD, SOLNIT SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
See F2, below.	See D.
Where the child is in foster care, court shall consider whether child has become integrated into oster family to the extent that familial identity is vith the foster family, and whether the foster amily is willing and able to permanently integrate hild, including but not limited to such factors as:) love, affection, emotional ties of child with arents and with integrating family; b) capacity, isposition of parents to provide love, guidance nd continuing education, as compared with integrating family; c) capacity, disposition of arents to provide food, shelter, clothing, medical are and other physical, mental, emotional needs, s compared with integrating family; d) length of ime child has lived in stable, satisfactory environnent and desirability of maintaining continuity; e) ermanence as a family unit of integrating family;) physical and mental health and moral fitness of arents as compared with integrating family; g) ome, school, community record of child when vith parents and with integrating family; h) easonable preference of child, if court deems hild of sufficient capacity. 12(3).	The term "psychological parent" is defined in paragraph 10.3 of Provisions for a Child Placement Statute, in the previous book by the same authors, Goldstein, Freud, Solnit, *Beyond the Best Interests of the Child*, (1973; 2nd Ed. 1979). A psychological parent is one who on day to day basis fulfills psychological needs and physical needs of a child. The psychological parent may be a biological, adoptive, foster, or common law parent, or any other person.
See F2, Factor (h), above.	See D.
	Foster care with tenure is the permanent placement of a child with a long-time caretaker who is eligible but does not wish to adopt. 10.12.

	UNIFORM JUVENILE COURT ACT (1968)	ADVISORY COMMITTEE ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE (1980)
. Best Interests of the Child	When a ground for termination applies the court "may" order termination. The statutory interpretation section states that a main purpose of the act is to provide for the care, protection and wholesome moral, mental, and physical development of children coming within its provisions. 47, 1.	
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NATIONAL COUNCIL OF JUVENILE COURT JUDGES (1976)	GOLDSTEIN, FREUD, SOLNIT SUGGESTIONS FOR A CHILD PLACEMENT CODE (1979)
In considering any of the above bases for terminating the rights of the parent, the court shall give primary consideration to the physical, mental or emotional needs of the child. 12(5).	Following an adjudication that a ground for intervention exists or following request by parent for a disposition, all parties shall have the opportunity to be heard as to which disposition they believe to be in the child's best interest. 20.3.

Where to Obtain Copies of the Model Acts

The *Juvenile Justice Standards Relating to Abuse and Neglect*, prepared by the Institute of Judicial Administration and the American Bar Association (Juvenile Justice Standards Commission), is a tentative draft only. It has not been submitted for approval to the ABA House of Delegates. A revised edition is currently being prepared by the same Commission. The 1977 Tentative Draft is published by Ballinger Publishing Company, 17 Dunster Street, Cambridge, Massachusetts 02138.

The *Katz Model Act to Free Children for Permanent Placement* was published in S. N. Katz, *Freeing Children for Permanent Placement Through a Model Act*, 12 Family Law Quarterly 203 (1978) (includes foreword and commentary) and as part of an article, R. A. Howe, *Development of a Model Act to Free Children for Permanent Placement: A Case Study in Law and Social Planning*, 13 Family Law Quarterly 329 (1979). The Family Law Quarterly may be found in most law libraries.

The *HHS Model State Adoption Act and Model State Adoption Procedures* were developed by the Model Adoption Legislation and Procedures Advisory Panel of the Department of Health and Human Services. The Act and Procedures were published in the Federal Register on February 15, 1980, as notice of report for public comment. The Federal Register is located in any library which serves as a federal repository. A copy of the Act may be obtained by writing to Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013, telephone (202) 426-2822, or by contacting a Regional Office of the Children's Bureau. Copies are free.

The *Model Dissolution of Parent-Child Relationship Act* (April, 1976) is a joint effort by Victor Pike, of the Permanent Planning for Children in Foster Care Project of the Regional Research Institute for Human Services, and David Slader, Chief Attorney and Nina Robart, Legal Assistant of the Metropolitan Public Defender Child Advocacy Project in Portland, Oregon. A copy may be obtained by contacting either: the Regional Research Institute for Human Services, Portland State University, P.O. Box 751, Portland, Oregon 97207 or the National Legal Resource Center for Child Advocacy and Protection, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036.

The *RRI Guidelines for the Involuntary Termination of Parental Rights* (1980) was written by Mark Hardin, J.D., in association with the Permanent Planning for Children in Foster Care Project of the Regional Research Institute for Human Services. A copy of these guidelines may be obtained by writing to: The Regional Research Institute for Human Services, Portland State University, P.O. Box 751, Portland, Oregon 97207, or to the National Legal Resource Center for Child Advocacy and Protection, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036.

Suggestions for Some Provisions of a Child Placement Code is contained in *Before the Best Interests of the Child* (1979) by Joseph Goldstein, Anna Freud, Albert J. Solnit, as Appendix II. The book is published by the Free Press, Division of Mac Millian Publishing, 866 Third Avenue, New York, New York 10022. Price $3.95 (Paperback).

The *National Council of Juvenile and Family Court Judges Termination of Parental Rights Statute* was prepared by the Council's Neglected Children Committee, and is contained in the *National Bench Book for Juvenile Courts*. A copy of the Bench Book may be obtained by writing to the American Caselaw Corporation, P.O. Box 3337, St. Paul, Minnesota 55165. The statute is also found in the Family Law Reporter, published by the Bureau of National Affairs, Inc. Family Law Reporters are located in law libraries.

The *Standards for the Administration of Juvenile Justice* were prepared as a *Report* by the National Advisory Committee for Juvenile Justice and Delinquency Prevention in accordance with Section 247 of the Juvenile Justice and Delinquency Prevention Act (as administered by Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice). A copy may be purchased by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price is $10.00. GPO No. 027-000-00954-9.

The *Uniform Juvenile Court Act* was drafted by the National Conference of Commissioners on Uniform State Laws in July-August, 1968. It appears as Appendix B of the *National Bench Book for Juvenile Courts* (American Caselaw Corporation, P.O. Box 3337, St. Paul, Minnesota 55165) and in the Family Law Reporter published by the Bureau of National Affairs, Inc., Uniform Laws Section. Family Law Reporter Binders are located in law libraries.

The following excerpts have been reprinted with permission. Should you wish to copy any portion of these excerpts, contact the authors of and publishers of the acts listed on page 33.

Institute of Judicial Administration

American Bar Association

STANDARDS RELATING TO Abuse and Neglect

PART VIII: TERMINATION OF PARENTAL RIGHTS

8.1 Proceedings to review need for termination.

The issue of termination of parental rights may be considered at the time of the dispositional hearing following a finding of endangerment and should be considered at every review hearing thereafter. Both parents should be notified of the possibility of termination, where it is in issue, and the standard for determining termination. The parents should be afforded the opportunity to present evidence on the relevant issues, which are specified in Standards 8.2–8.4. These hearings should be the only forum for considering termination when a child is under court supervision.

8.2 Termination at the dispositional hearing.

A. Except as provided in Standard 8.2 B. 1.–3., termination should not be permissible at the dispositional hearing following a finding that the child is endangered.

B. A court should be authorized, although not required, to order termination at the dispositional hearing following a finding of endangerment only if:

1. The child has been abandoned: a child has been abandoned when he/she has not been cared for or contacted by his/her parents, although the parents are physically able to do so, for [sixty] days prior to the adjudicatory hearing, and despite adequate efforts to notify the parents, they do not appear at the adjudicatory or dispositional hearing.

2. The child has been removed from the parents previously, under the test established in Standard 6.4 C., has been returned to his/her parents, and after return the child must be removed again.

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3. Court jurisdiction in the present case is based on a finding that the child comes within Standard 2.1 A., the child or another child in the family has been previously found endangered under 2.1 A., and the parents have received therapy after the first instance of abuse. The party requesting termination should be required to prove that therapy was provided or offered to the parents previously.

C. Regardless of the provisions of Standard 8.2 B. 1.–3., a court should not be authorized to order termination if any of the exceptions in Standard 8.4 are applicable.

8.3 Standard for termination when child is in placement.

A. For children who were under three at the time of placement, a court should order termination after the child has been in placement for six months, if the child cannot be returned home at that time, unless the court finds by clear and convincing evidence that an exception specified in Standard 8.4 applies.

B. For a child who was over three at the time of placement, the court should order termination after the child has been in placement for one year if the child cannot be returned home at that time, unless the court finds by clear and convincing evidence that an exception specified in Standard 8.4 applies. However, if at the six-month review hearing the court finds that the parents have failed to maintain contact with the child during the previous six months and to reasonably plan for resumption of care of the child, the court may terminate parental rights at that time unless one of the exceptions specified in Standard 8.4 applies.

C. Whenever parental rights have not been terminated under subsections A. and B. because the child falls within one of the exceptions, the case should be reviewed every six months to determine whether the exceptions continue to be applicable. If not, termination should be ordered.

8.4 Situations in which termination should not be ordered.

Even if a child comes within the provisions of Standard 8.2 or 8.3, a court should not order termination if it finds by clear and convincing evidence that any of the following are applicable:

A. because of the closeness of the parent-child relationship, it would be detrimental to the child to terminate parental rights;

B. the child is placed with a relative who does not wish to adopt the child;

C. because of the nature of the child's problems, the child is placed in a residential treatment facility, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed;

D. the child cannot be placed permanently in a family environment and failure to terminate will not impair the child's opportunity for a permanent placement in a family setting;

E. a child over age ten objects to termination.

PART II: STATUTORY GROUNDS FOR INTERVENTION

2.1 Statutory grounds for intervention.

Courts should be authorized to assume jurisdiction in order to condition continued parental custody upon the parents' accepting supervision or to remove a child from his/her home only when a child is endangered in a manner specified in subsections A.-F.

A. [Coercive intervention should be authorized when] a child has suffered, or there is a substantial risk that a child will imminently suffer, a physical harm, inflicted nonaccidentally upon him/her by his/her parents, which causes, or creates a substantial risk of causing disfigurement, impairment of bodily functioning, or other serious physical injury.

PART VI: DISPOSITIONS

6.4 Standards for choosing a disposition.

C. Removal.

A child should not be removed from his/her home unless the court finds that:

1. the child has been physically abused as defined in Standard 2.1 A. and there is a preponderance of evidence that the child cannot be protected from further physical abuse without being removed from his/her home; or

2. the child has been endangered in one of the other ways specified by statute and there is clear and convincing evidence that the child cannot be protected from further harm of the type justifying intervention unless removed from his/her home.

3. Even if a court finds subsections 1. or 2. applicable, before any child is removed from his/her home, the court must find that there is a placement in fact available in which the child will not be endangered.

4. Even if a court finds subsections 1. or 2. applicable, the court should not be authorized to remove a child when the child is endangered solely due to environmental conditions beyond the control of the parents, which the parents would be willing to remedy if they were able to do so.

5. Those advocating removal should bear the burden of proof on all these issues.

Model Act to Free Children for Permanent Placement
September 21, 1978

Reprinted with the permission of Sanford N. Katz, Editor-in-Chief, Family Law Quarterly.

Section 1

[Purposes of Act; Construction of Provisions]

(a) The general purposes of this Act are to:

(1) provide prompt judicial procedures for freeing minor children from the custody and control of their parents, by terminating the parent-child relationship;

(2) promote the placement of such minor children in a permanent home, preferably through adoption or by vesting their *de facto* parents with legal guardianship; and

(3) ensure that the constitutional rights and interests of all parties are recognized and enforced in all proceedings and other activities pursuant to this Act.

(b) It is the policy of this State that:

(1) whenever possible and appropriate, the birth family relationship shall be recognized, strengthened, and preserved through efforts and procedures as provided for under [state] statute(s);

(2) removal of a child from his home shall occur only when the child cannot be adequately protected within the home;

(3) if a child has been removed from his home for one year and cannot be returned home within a reasonable time thereafter, the state should promptly find an alternative arrangement to provide a stable, permanent home for him;

(4) the interests of the child shall prevail if the child's interests and parental rights conflict; and

(5) because termination of the parent-child relationship is so drastic, all non-judicial attempts by contractual arrangements, expressed or implied, for the surrender or relinquishment of children, are invalid unless approved by the court.

(c) This Act shall be liberally construed to promote the general purposes and policies stated in this section.

Section 4

[*Grounds for Involuntary Termination of the Parent-Child Relationship*]

(a) An order of the court for involuntary termination of the parent-child relationship shall be made on the grounds that the termination is in the child's best interest, in light of the considerations in subsections (b) through (f), where one or more of the following conditions exist:

(1) the child has been abandoned, as defined by Section 2(a)(4)(iv);

(2) the child has been adjudicated to have been abused or neglected in a prior proceeding;

(3) the child has been out of the custody of the parent for the period of one year and the court finds that:

(i) the conditions which led to the separation still persist, or similar conditions of a potentially harmful nature continue to exist;

(ii) there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; and

(iii) the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home.

(b) When a child has been previously adjudicated abused or neglected, the court in determining whether or not to terminate the parent-child relationship shall consider, among other factors, the following continuing or serious conditions or acts of the parents:

(1) emotional illness, mental illness, mental deficiency, or use of alcohol or controlled substances rendering the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(2) acts of abuse or neglect toward any child in the family; and

(3) repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, shelter, and education as defined by law, or other care and control necessary for his physical, mental, or emotional health and development; but a parent or guardian who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child, is not for that reason alone a negligent parent and the court is not precluded from ordering necessary medical services for the child according to existing state law.

(c) Whenever a child has been out of physical custody of the parent for more than a year, the court shall consider, pursuant to subsection (a)(3), among other factors, the following:

(1) the timeliness, nature and extent of services offered or provided by the agency to facilitate reunion of the child with the parent;

(2) the terms of social service contract agreed to by an authorized agency and the parent and the extent to which all parties have fulfilled their obligations under such contract.

(d) When considering the parent-child relationship in the context of either subsections (b) or (c), the court shall also evaluate:

(1) the child's feelings and emotional ties with his birth parents; and

(2) the effort the parent has made to adjust his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home in the foreseeable future, including:

(i) the extent to which the parent has maintained regular visitation or other contact with the child as part of a plan to reunite the child with the parent;

(ii) the payment of a reasonable portion of substitute physical care and maintenance if financially able to do so;

(iii) the maintenance of regular contact or communication with the legal or other custodian of the child; and

(iv) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time.

(e) The court may attach little or no weight to incidental visitations, communications, or contributions. It is irrelevant in a termination proceeding that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation.

Section 16

[*Dispositions*]

(a) After considering all the evidence, if the court finds that sufficient grounds exist for termination of the parent-child relationship, the court shall:

(1) Decree termination of the parent-child relationship and after having considered the psychosocial assessment and report elect one of the following alternatives:

(i) appoint an individual as guardian of the child's person and vest legal custody in that person; or

(ii) appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency; or

(iii) appoint an authorized agency as guardian of the child's person and vest legal custody in that agency; or

(2) Not decree termination of the parent-child relationship and after having considered the psychosocial assessment and report order that a long-term or permanent home for the child be provided by appointing as guardian of the child's person the present *de facto* parent if:

(i) it is deemed that the child would benefit from the continued parent-child relationship; or

(ii) the child is 14 or more years of age and objects to the termination of the parent-child relationship.

Section 2

[*Definitions*]

(a) As used in this Act, unless the context otherwise requires:

(4) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:

(i) inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(ii) commits, or allows to be committed, against the child, a sexual offense, as defined by state law;

(iii) fails to supply the child with adequate food, clothing, shelter, education (as defined by law), or health care, although financially able to do so or offered financial or other reasonable means to do so; for the purposes of this Act, "adequate health care" includes any medical or non-medical remedial health care permitted or authorized under state law;

(15) "*De facto* parent" means a person, other than a parent, legal custodian, or guardian of the person, such as a relative, stepparent, or foster parent, who has had continuous physical custody of a child for one year and with whom the child has developed significant emotional ties.

Section 8

[*Persons Eligible to Petition*]

(b) A petition seeking involuntary termination of the parent-child relationship may be filed by:

(1) an authorized agency;

(2) either parent seeking termination with respect to the other parent; or

(3) a guardian of the child's person, legal custodian, the child's guardian *ad litem* appointed in a prior proceeding; or

(4) a *de facto* parent, as defined in Section 2(a)(15), of a child who had been in foster care for 2 years.

Model State Adoption Act

Section 313. Adjudicatory Hearing; Grounds for Involuntary Termination of Parental Rights

(d) An order of the court for involuntary termination of the legal parent-child relationship shall be made only where the court finds, upon clear and convincing evidence, that the termination is in the best interests of the child, and that one or more of the following circumstances or sets of circumstances exist:

(1) The child has been abandoned as defined in subsection (a)(3) of Section 309 of this Act.

(2) Parental rights are being terminated with respect to a child as to whom no father has been identified or whose putative father has not been located within thirty days after diligent effort as required by Section 311(b) of this Act;

(3) The putative father, within thirty days of the notice effected pursuant to Section 308 of this Act, has failed to file or execute any one of the following:

(A) An Intent to Take Custody of a child,

(B) A Disclaimer of Paternity,

(C) A relinquishment,

(D) A petition for voluntary termination of parental rights;

(4) The child has been adjudicated to have been abused or [neglected or dependent—insert appropriate term from state statute] in a prior proceeding. In determining whether termination of parental rights would be in the best interests of the child in such a case, the court shall consider and make written findings regarding the factors contained in subsection (e) of this Section 313 and the following continuing or serious conditions or acts of the parents:

(A) Emotional illness, mental illness, mental deficiency, or use of alcohol or controlled substances rendering the parent unable to care for the immediate and ongoing physical or psychological needs of the child; or

(B) Any proven act or acts of abuse or neglect toward any child in the family subsequent to the adjudication of abuse or neglect; or

(C) Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, shelter, or education as defined by law, or other care and control necessary for his physical, mental, or emotional health and development; but a parent who, legitimately practicing his religious belief, does not provide specified medical treatment or education for a child, is not for that reason alone a negligent parent;

(5) The child has been out of the physical custody of the parent for one year, or the father has failed to take physical custody of the child within sixty days after an adjudication of paternity pursuant to Section 308 of this Act; or the mother has failed to take physical custody of the child within sixty days of the birth of the child, and:

(A) The conditions which led to the separation still persist, or similar conditions of a potentially harmful nature continue to exist;

(B) There is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; and

(C) The continuation of the legal parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent family.

In determining whether termination of parental rights would be in the best interests of the child under this subsection (5), the court shall consider and make written findings regarding the factors contained in subsection (e) of this Section 313.

(6) The child has been out of the physical custody of the parent for a period of three years and:

(A) The child has developed an emotionally stable relationship with his *de facto* parent;

(B) The *de facto* parent has petitioned to adopt the child; and

(C) The child is over the age of ten and wishes to be adopted by the *de facto* parent.

(e) In determining whether to terminate parental rights under subsections (d)(4) or (d)(5) of this section, the court shall consider and make written findings regarding:

(1) The timeliness, nature, and extent of services offered or provided to the parent and the child by the agency to facilitate reunion of the child with the parent;

(2) The terms of any social service contract agreed to by an authorized agency and the parent, and the extent to which all parties have fulfilled their obligations under such contract;

(3) The feelings and emotional ties of the child with respect to his parents; and

(4) The effort the parent has made to adjust his circumstances, conduct, or conditions to make it in the best interests of the child to return him to his home in the foreseeable future, including:

(A) The extent to which the parent has maintained regular visitation or other contact with the child as part of a plan to reunite the child with the parent;

(B) The payment of a reasonable portion of substitute physical care and maintenance if financially able to do so;

(C) The maintenance of regular contact or communication with the legal or other custodian of the child; and

(D) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time.

(f) Where any of the circumstances in subsections (d)(1) through (d)(6) of this Section 313 exist, the court shall consider:

(1) The contents of the assessment and report, if any, submitted pursuant to Section 312 of this Act;

(2) The specific benefits to the child of continuing the legal parent-child relationship, including opportunities for contact between the child and persons of his own racial, ethnic, cultural and biological heritage; and

(3) The wishes of the child regarding termination of the legal parent-child relationship.

(g) The maintenance of a legal parent-child relationship for the purpose of rehabilitation of a parent shall not be sufficient grounds for continuation of such relationship.

(h) In ruling on a petition for involuntary termination of parental rights with respect to a child, the court shall not consider the availability or unavailability of an adoptive family for the child.

(i) Notwithstanding any other provisions of this Section 313, no legal parent-child relationship may be terminated solely because a parent has been deprived of the legal custody of a child by reason of a divorce or a legal separation, or of the physical custody of a child by the act or conduct of the other parent of the child.

Section 308. Putative Fathers

Prior to the placement of a child for adoption, the rights of any man named as a putative father must be terminated. This section sets forth the legal procedures which provide a basis for the termination of his rights if he chooses not to involve himself in actively seeking custody of the child.

When the putative father has been offered counseling (Section 205 and 206), but does not make a decision within a reasonable time or refuses to cooperate with the agency in making a plan for the child, the agency must file a Notice of Intent to Terminate Parental Rights in the court located when the agency or mother plans to place the child for adoption.

The Notice of Intent allows the putative father 30 days in which to take one of four courses of action:

He may disclaim paternity of the child, in which case he has no further rights with respect to the child. A disclaimer of paternity, like a relinquishment, serves as evidence that the child has been legally freed for adoption and must be filed along with the petition for the child's adoption.

He may relinquish the child to an agency.

He may file a petition for the voluntary termination of his parental rights.

He may file an Intent to Take Custody of the child in which case the court will hold a hearing within 15 days to adjudicate paternity.

If a finding of paternity results, the father has 60 days to take physical custody of the child, and the agency will be ordered to assist the father in developing a plan for his child. If the father fails to take custody, the court may proceed to terminate his paternal rights.

If the putative father takes no action after receiving a Notice of Intent to Terminate, the court may terminate his rights on the basis of his inaction (Section 313(d)(3)). When the Notice of Intent cannot be served upon the putative father, the agency is required to make a diligent search for him (Section 311).

The procedures outlined in this section should help to prevent undue delay in making permanent plans for a child. Because of the effect of a disclaimer of paternity, the state adoption administration is given the responsibility to design forms and procedures which will assure that the father is fully aware of the consequences of disclaiming paternity.

Section 309. Court Petition for Involuntary Termination of Parental Rights

(a) (3) A child placement or child-caring agency having custody of any child it has reason to believe has been abandoned must promptly file a petition seeking involuntary termination of parental rights; such petition must in every case be filed within ten days after the agency establishes abandonment. Abandonment is conclusively presumed if the child is found under such circumstances that the identity or location of the parent is unknown and has not been ascertained by prompt and diligent searching and the parent does not claim the child within two months after the child is found.

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Section 311. Preliminary Hearing; Right to Counsel; Competency

(b) If notice to a parent required pursuant to subsections (b) and (c) of Section 310 of this Act was not affected, the court:

(1) If the location of a parent is not known, shall inquire into efforts made by the petitioner to locate the parent and, if the court finds such efforts insufficient, require the petitioner to conduct a diligent search; or

(2) If the identity of a parent of the child is unknown,

(A) Shall inquire into the efforts made by the petitioner to identify and locate the unknown parent and, if the court finds such efforts insufficient, require the petitioner to make a diligent effort to identify and locate the unknown parent; and

(B) May require the appearance of the other parent and make inquiry concerning the identity and residence of the unknown parent, or require the known parent to file an affidavit giving all known information concerning the identity and residence of the unknown parent, except the known parent may not be compelled to disclose any such information.

Section 312. Assessment of Child and Report

(a) If the court retains jurisdiction at the preliminary hearing and the action for involuntary termination of parental rights is contested, the court shall order assessment of the needs of the child who is the subject of the petition. Such assessment shall be conducted by:

(1) Social service personnel attached to the court;

(2) A mental health or other agency which is not the petitioner; or

(3) A professional deemed qualified by the court.

An agency which is the petitioner may make the assessment only upon court determination that none of the alternatives in subsections (1) through (3) of this subsection (a) is available.

(b) A report of the assessment shall be submitted within thirty days after the court directive, unless the court grants a request for an extension, and shall be used by the court in deciding whether the petition for involuntary termination of parental rights shall be granted.

(c) The assessment and report shall consider:

(1) The circumstances described in the petition;

(2) The present physical, mental and emotional conditions of the child and his parents, including the results of all medical, psychiatric, or psychological examinations of the child or of any parent whose relationship to the child is subject to termination;

(3) The nature of all past and existing relationships among the child, his siblings, and his parents;

(4) The proposed plan for the child;

(5) The preferences of the child according to his maturity of judgment;

(6) The nature, extent, and quality of services offered or provided to a child and his parents to facilitate reunion of the child with his parents;

(7) Any other facts pertinent to determining what will be in the child's best interest, including, but not limited to the child's culture, and services provided or offered by the [state department of social services] or by any other agencies or individuals.

(d) The court may order an assessment and report, in accordance with the provisions of subsections (a) through (c) of this Section 312, to assist it in ruling upon the merits of an uncontested petition for involuntary termination of parental rights.

Suggested Draft

April 1976

MODEL DISSOLUTION OF PARENT-CHILD RELATIONSHIP ACT

SECTION VII. GROUNDS FOR DISSOLUTION OF PARENT-CHILD RELATIONSHIP OR SEVERANCE OF PARENTAL CONTROL

The court may, upon petition, enter any order or decree authorized by paragraph B or C of Section XXI of this Act upon a finding that such order or decree is the least detrimental available alternative and that one or more of the following conditions exist:

A. The parent has consented in writing to the entry of the order or decree and, having been advised of the effect of his act, has acknowledged and affirmed his written consent before the court.

B. The parent has abandoned the child by evidencing, either by statement or conduct, a settled intent to forego for the reasonable future all parental rights or all parental responsibilities and has not, for a period of six months prior to the filing of the petition, assumed responsibility for the care and custody of the child or participated in a plan to assume such responsibility. It shall be disputably presumed that a parent has abandoned his child if the child is found under circumstances such that the identity of the parent is unknown and cannot be ascertained, despite diligent searching, and the parent has not come forward to claim the child for a period of six months.

C. Placing the child in the custody of the parent at any time within the reasonable future would raise a substantial risk of serious detriment to the child. In determining such risk the court may consider but is not limited to the following:

1. Mental or emotional illness or mental deficiency of the parent.
2. Physical, psychological, or sexual abuse of any child by the parent. It shall be disputably presumed that the parent is responsible for the abuse of any child in his custody, and it shall constitute abuse for the purposes of this sub-paragraph that a parent, who knew or should have known that his child was being abused, did not take reasonable action to protect the child.
3. Abusive use by the parent of intoxicating liquor or narcotic or dangerous drugs.
4. Neglect of any child by the parent which may include, but is not limited to, failure to provide for the child's basic medical and nutritional needs.
5. The routinely maintained unsafe or unsanitary condition of the parental home.
6. The conviction of the parent for the homicide of the other parent.

D. Where the physical custody of the child is lodged with others, the parent has failed for a period of one year to adjust his circumstances, conduct or condition so as to provide minimally adequate care for the child in the parental home, and the parent is unlikely to do so within the reasonable future. Minimally adequate care is that care, the absence of which raises a substantial risk of serious detriment to the child.

E. The parent has failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child for a period of one year. In determining such failure or neglect, the court shall consider but is not limited to one or more of the following:

1. Failure by the parent, although able, to assume care and custody of the child in the parental home.
2. Failure by the parent to pay a reasonable portion of substitute physical care and maintenance, based on ability to pay, if physical custody is lodged with others.
3. Failure by the parent to maintain regular visitation or other contact with the child as part of a plan reasonably calculated to reunite the child with the parent.
4. Failure by the parent to maintain regular contact or communication with the physical or legal custodian of the child.
5. In determining failure or neglect under paragraph E of this Section, the court may disregard incidential care and custody, visitation, communications or contributions.

F. The parent is incarcerated in a penal institution upon conviction for a criminal offense and is serving a sentence of not less than two years of which not less than one year remains to be served within the institution at the time the petition is filed, and the parent is unlikely to be released within the reasonable future.

G. Where the physical custody of the child is lodged with the other parent and the parents are living separately, the parent's conduct or condition falls under paragraph B, C or F of this Section, or the parent as acknowledged his consent pursuant to paragraph A of this Section or the parent has failed or neglected without reasonable and lawful cause for a period of one year to do one or more of the following:

1. Pay a reasonable portion of the child's support and maintenance, based on ability to pay. It shall be disputably presumed that an order of support by a court of competent jurisdiction is reasonable.
2. Maintain regular visitation or other contact with the child.
3. In determining failure or neglect under paragraph G of this Section, the court may disregard incidential visitation, communications or contributions.

SECTION III. DEFINITIONS

G. "The least detrimental available alternative" means the available alternative which maximizes the child's opportunity for maintaining on a continuous, unconditional, and permanent basis a relationship with an adult parent figure from whom the child receives care, affection and nurturance.

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SECTION VIII. RIGHTS OF THE CHILD TO PREVAIL

When one or more of the grounds have been established pursuant to Section VII of this Act, the goal of securing the least detrimental available alternative for the child shall prevail over any conflicting rights of the parent, and it shall be presumed that any right of the parent is consistent with the interests of the child.

SECTION IX. DEFENSES

A. It shall not be a defense to a petition that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation.

B. If prior to the filing of the petition, the child has been found to be (e.g., within the jurisdiction of the juvenile court) and has been committed by the court to the legal custody of (e.g., the Department of Welfare) or other licensed child-caring agency as defined by (appropriate statute), it shall be the duty of said agency to provide or offer to the parent social services which are available in the community and are reasonably designed to facilitate the return of the child to the parent. It shall be a defense to a petition that such services were not provided or offered if the parent has been available and has made reasonable efforts to maintain a continuing relationship with the child and to adjust his circumstances, conduct or condition so as to provide for the child's return and if, at the time the defense is raised, it is probable that the provision of such services would be successful in effecting the return of the child within the reasonable future.

C. In determining whether a child will receive minimally adequate care or be exposed to a substantial risk of serious detriment in the parental home, the court shall consider the continuing availability of reasonable social services.

D. The practice of a parent who chooses for himself or his child treatment by prayer or spiritual means alone shall not be construed as a lack of minimally adequate care for the child or as conduct raising a substantial risk of serious detriment to the child pursuant to this Act.

SECTION XXI. ORDERS; DECREES; INHERENT POWERS OF THE COURT; DISPOSITION

A. Every order entered pursuant to this Section shall be in writing and recite the findings of fact upon which it is based.

B. Upon a finding that one or more of the grounds set forth in Section VII of this Act have been established by clear and convincing evidence, that no rights of the other parent remain outstanding, and that it is the least detrimental available alternative for the child, the court shall either:

1. Enter an order severing parental control over the child, awarding his legal custody and guardianship of his person to an appropriate person or public or private child-caring agency, and regulate, in the manner least detrimental to the child, the relationship between the child and the parent.
2. Enter an unconditional decree dissolving the parent-child relationship and awarding the child's legal custody and guardianship of his person to an appropriate individual or public or private child-caring agency with authority to consent to the child's adoption.
3. Enter a conditional decree dissolving the parent-child relationship when it appears to the court that the least detrimental alternative is the adoption of the child but the court is unable to determine whether an adoptive placement is available. An order entered pursuant to this sub-paragraph shall award the child's legal custody and guardianship of his person to an appropriate individual or public or private child-caring agency with the authority to locate and place the child in an adoptive home. Such decree shall become unconditional upon a finding by the court that the child has been placed in a home for the purposes of adoption. Upon a finding by the court that, despite diligent effort, no adoptive home can be found for the child, the court may enter any other provided for in this Section.
4. No order shall be entered pursuant to sub-paragraphs 2 or 3 of this paragraph if the child is of the age of thirteen years or over and objects to the order.

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RRI GUIDELINES FOR THE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

by Mark Hardin, J.D.

Before a petition for involuntary termination of parental rights is brought, it should be first determined whether the parent is willing to voluntarily terminate parental rights. These guidelines apply to the situation where voluntary termination has been explored and rejected.

I. Termination shall be ordered when:

(A) The child cannot be placed in the parent's home in a reasonable length of time; and

(B) Termination is in the best interests of the child.

II. The following five grounds shall be considered as indicators of whether or not the child can be placed in the parental home in a reasonable length of time. These grounds may apply singly or in combination in any given case.

(A) The parent has shown extreme disinterest or lack of commitment toward the child for 6 months or more if the child is under three years old or one year or more if the child is over three, taking into account:

(1) whether the parent has left the child in others' care under circumstances in which the identity or whereabouts of the parent could not be ascertained after prolonged and diligent searching;

(2) whether the parent has expressed the intent to permanently forego care and contacts with the child;

(3) whether the parent has left the child in others' care for prolonged periods of time, when capable of caring for the child;

(4) whether the parent has substantially failed to exercise available visitation with the child; and

(5) whether the parent has substantially failed to communicate with the child, in spite of opportunities to do so;

(B) During the time that placement of the child has been lodged with others, the parent was unable or unwilling to make necessary adjustments to prepare to care for the child, as indicated by unreasonable and substantial parental failure for at least 6 months if the child is under three years old or one year if the child is over three to:

(1) Cooperate with the child care agency in the formulation and implementation of a plan reasonably designed to effect the placement of the child with the parent; or

(2) Eliminate parental behavior preventing placement of the child with the parent, in spite of diligent efforts of the child care agency to assist the parent. Such behavior can include but is not limited to: maintaining household conditions dangerous to the child; living with others who endanger the child; violent behavior by the parent likely to occur in the presence of the child; and erratic or bizarre parental behavior that would harm the child if placed with the parent and exposed to such behavior.

(C) During the time the child was placed with his parent, the parent's conduct caused serious harm or danger to the child or his siblings, which makes return of the child an unacceptable risk, based on one or more of the following factors:

(1) whether such conduct has occurred many times or over a long period of time;

(2) whether such conduct has continued in spite of reasonable efforts of public or private child welfare agencies to arrange counseling, therapy, or other services;

(3) whether there is no apparent substantial change in parental conditions, attitudes, or behavior connected with such conduct; and

(4) the severity of the harm or danger to the child or his siblings.

(D) The parent has a diagnosable condition unlikely to change within a reasonable time such as alcohol or drug addiction, mental deficiency, mental illness, emotional illness, or extreme physical incapacitation, which condition makes the parent unlikely to assume minimally acceptable care of the child.

(E) The child has an extreme and deep seated antipathy toward the parent or there has been other substantial erosion of the relationship between parent and child which:

(1) Was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment; and

(2) Makes it likely that the child would be seriously harmed if placed with the parent.

III. Where the child cannot be placed in the parental home within a reasonable time, long term placement alternatives which end agency custody and supervision shall be considered as alternatives to the termination of parental rights. Such alternatives may include but are not limited to individual legal custody and guardianship by persons other than the parent. Such alternatives shall be selected if termination is not in the best interests of the child.

IV. Termination is in the best interests of the child when:

(A) Ending all parent-child contacts is necessary for the emotional well-being of the child; or

(B) Termination is the only effective way to ensure the child a good opportunity to be fully integrated into a substitute home.

UNIFORM JUVENILE COURT ACT

Section 1. [*Interpretation.*] This Act shall be construed to effectuate the following public purposes:

(1) to provide for the care, protection, and wholesome moral, mental, and physical development of children coming within its provisions;

Section 47. [*Termination of Parental Rights.*]

(a) The court by order may terminate the parental rights of a parent with respect to his child if:

(1) the parent has abandoned the child;

(2) the child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or

(3) the written consent of the parent acknowledged before the court has been given.

(b) If the court does not make an order of termination of parental rights it may grant an order under section 30 if the court finds from clear and convincing evidence that the child is a deprived child.

Section 2. [*Definitions.*] As used in this Act:

(5) "deprived child" means a child who:

(i) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian;

(ii) has been placed for care of adoption in violation of law; [or]

(iii) has been abandoned by his parents, guardian, or other custodian; [or]

[(iv) is without a parent, guardian, or legal custodian;]

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Section 30. [*Disposition of Deprived Child.*]

(a) If the child is found to be a deprived child the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

(1) permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(ii) an agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(iii) the Child Welfare Department of the [county] [state,] [or other public agency authorized by law to receive and provide care for the child;]

(iv) an individual in another state with or without supervision by an appropriate officer under section 40; or

(3) without making any of the foregoing orders transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 39 if the child is or is about to become a resident of that state.

(b) Unless a child found to be deprived is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

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Standards for the Administration of Juvenile Justice

Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention July 1980

3.185 Criteria for Termination of Parental Rights

The family court should be authorized but not required to terminate parental rights when:

a. A juvenile has been abandoned as defined in Standard 3.113(a);

b. A juvenile has been physically abused as defined in Standard 3.113(b);

c. A juvenile has been removed from the home pursuant to Standard 3.184 and has remained in out-of-home placement for six months or more;

d. A juvenile's parents have previously been found to have neglected or abused that juvenile or another juvenile in the same household; or

e. A juvenile's parents competently, voluntarily, and intelligently consent.

Parental rights should not be termined if: termination would be detrimental to the juvenile because of the closeness of the parent-child relationship; the juvenile has been placed in a residential facility because of his/her physical or mental health problems and termination is not necessary to provide a permanent family home; the juvenile has been placed with a relative who does not wish to adopt him/her; the juvenile cannot be placed in a family environment; or the juvenile objects.

Following termination, the judge should be authorized to order the juvenile to be placed for adoption; placed with a legal guardian; or if no other alternative is available, placed in long-term foster care. The case should be reviewed by the family court each year until a permanent placement has been made.

3.184 Dispositional Alternatives and Criteria—Neglect and Abuse

Dispositions following adjudication of a neglect and abuse petition should adequately protect the juvenile while causing as little interference as possible with the autonomy of the family. They should be designed to alleviate the immediate danger to the juvenile, to mitigate or cure any harm already suffered, and to aid the juvenile and the juvenile's parents, guardian, or primary caretaker so that the juvenile will not be endangered in the future.

In determining the disposition to be imposed, the family court judge should select the disposition consistent with the nature and circumstances of the neglect or abuse; the age, maturity, interests, and needs of the juvenile; the interests and needs of the family; the prior contacts of the family with the intake unit and family court; the results of those contacts; and the efforts of public agencies to provide services to the juvenile and his/her family.

Dispositional alternatives in neglect and abuse cases should include orders requiring: the provision of services, counseling, therapy or treatment to the juvenile and/or the juvenile's family; cooperation by the juvenile and family with the offered services, counseling, therapy, or treatment; the continuation or discontinuation of behavior by the juvenile or the juvenile's parent, guardian, or primary caretaker; informal or casework supervision; and placement of the juvenile in a daycare program, with a relative, or in a foster home, group home, or residential treatment center.

Juveniles should not be removed from home unless:

a. They have been abused or otherwise endangered as defined in standard 3.113;
b. There is clear and convincing evidence that they cannot be adequately protected from further neglect or abuse unless removed; and
c. Out-of-home placement is less likely to be damaging to the juvenile than allowing the juvenile to remain with his/her family.

If siblings are removed, they should ordinarily be placed together.

3.113 Jurisdiction Over Neglect and Abuse

The jurisdiction of the family court over neglect and abuse should incude:

a. Juveniles who are unable to provide for themselves and who have no parent, guardian, relative, or other adult with whom they have substantial ties willing and able to provide supervision and care;
b. Juveniles who have suffered or are likely to suffer physical injury inflicted nonaccidentally by their parent, guardian, or primary caretaker, which causes or creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm;
c. Juveniles who have been sexually abused by their parents, guardian, primary caretaker, or a member of the household;
d. Juveniles whose physical health is seriously impaired or is likely to be seriously impaired as a result of conditions created by their parents, guardian, or primary caretak-

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er, or by the failure of such persons to provide adequate supervision and protection;

e. Juveniles whose emotional health is seriously impaired and whose parents, guardian, or primary caretaker fail to provide or cooperate with treatment;

f. Juveniles whose physical health is seriously impaired because of the failure of their parents, guardian, or primary caretaker to supply them with adequate food, clothing, shelter or health care, although financially able or offered the means to do so;

g. Juveniles whose physical health has been seriously impaired or is likely to be seriously impaired or whose emotional health has been seriously impaired because their parents have placed them for care or adoption, in violation of the law, with an agency, an institution, a nonrelative, or a person with whom they have no substantial ties;

h. Juveniles who are committing acts of delinquency as a result of pressure from or with the approval of their parents, guardian, or primary caretaker; and

f. Juveniles who parents, guardian, or primary caretaker prevent them from obtaining the education required by law.

Jurisdiction over neglect and abuse should extend to the juvenile, his/her parents, guardian or primary caretaker, and any agency or institution with a legal responsibility to provide needed services to those persons.

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National Council of Juvenile Court Judges
Termination of Parental Rights[1] Statute

Section 12 Termination of Parental Rights

(1) The Court may terminate parental rights when the Court finds the parent unfit or that the conduct or condition of the parent is such as to render him/her unable to properly care for the child and that such conduct or condition is unlikely to change in the foreseeable future. In determining unfitness, conduct or condition the Court shall consider, but is not limited to the following:

(a) Emotional illness, mental illness or mental deficiency of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child.

(b) Conduct towards a child of a physically, emotionally or sexually cruel or abusive nature.

(c) Excessive use of intoxicating liquors or narcotic or dangerous drugs.

(d) Physical, mental or emotional neglect of the child.

(e) Conviction of a felony and imprisonment.

(f) Unexplained injury or death of a sibling.

(g) Reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family.

(2) Where a child is not in the physical custody of the parent, the Court, in proceedings concerning the termination of parental rights, in addition to the foregoing, shall also consider, but is not limited to the following:

(a) Failure to provide care; or pay a reasonable portion of substitute physical care and maintenance where custody is lodged with others.

(b) Failure to maintain regular visitation or other contact with the child as designed in a plan to reunite the child with the parent.

(c) Failure to maintain reasonably consistent contact and/or communication with child.

(d) Lack of effort on the part of the parent to adjust his circumstances, conduct or conditions to meet the needs of the child.

(3) Where a child has been placed in foster care by a Court orde or has been otherwise placed by parents or others into the physical custody of such family, the Court shall in proceedings concerning the termination of parental rights and responsibilities consider whether said child has become integrated into the

[1] Drafted by the Neglected Children Committee, chaired by Hon. James J. Lincoln, Judge, Wayne County [Michigan] Juvenile Court, 1976.

foster family to the extent that his familial identity is with that family, and said family or person is able and willing to permanently so integrate the child.

In such considerations, the Court shall note, but is not limited to the following:

(a) The love, affection and other emotional ties existing between the child and the parents, and his ties with the integrating family.

(b) The capacity and disposition of the parents from whom he was removed as compared with that of the integrating family to give the child love, affection and guidance and continuing the education of the child.

(c) The capacity and disposition of the parents from whom the child was removed in the integrating family to provide the child with food, clothing, medical care and other physical, mental and emotional needs.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining such continuity.

(e) The permanence as a family unit of the integrating family or person.

(f) The moral fitness, physical and mental health of the parents from whom the child was removed and that of the integrating family or person.

(g) The home, school, community record of the child, both when with the parents from whom he was removed and when with the integrating family.

(h) The reasonable preference of the child, if the Court deems the child of sufficient capacity to express a preference.

(i) Any other factor considered by the Court to be relevant to a particular placement of the child.

(4) The rights of the parents may be terminated as provided herein if the Court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months following the finding of the child.

(5) In considering any of the above basis for terminating the rights of the parent, the Court shall give primary consideration to the physical, mental or emotional condition and needs of the child.

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Suggestions for Some Provisions of a Child Placement Code

Here we suggest language for statutory provisions to codify some of our proposals. The book itself serves as a commentary to these provisions. They are to be in the context of and as additions or amendments to the provisions in the Child Placement Code of Hampstead-Haven in Chapter 7 of *Beyond the Best Interests of the Child*.

ARTICLE 10. DEFINITIONS

PARA. 10.5 LONGTIME CARETAKER

A Longtime Caretaker is an Adult with whom a Child has been placed and who has continuously cared for this Child for

a. A period of 1 or more years if the Child was less than 3 years old at the time of placement; *or*

b. A period of 2 or more years if the Child was 3 years old or older at the time of placement.

Longtime Caretakers are presumed to be Parents.

PARA. 10.8 LEAST DETRIMENTAL AVAILABLE ALTERNATIVE

The Least Detrimental Available Alternative is that Child Placement and procedure for Child Placement which maximizes, in accord with the Child's Sense of Time, the Child's opportunity for being wanted and for maintaining on a continuous, unconditional, and permanent basis a relationship with at least one Adult who is or will become the Child's Psychological Parent.[1]

PARA. 10.11 PERMANENT PLACEMENT

A Permanent Placement is any Placement of a Child that is neither a Temporary Foster Care Placement nor an Emergency Placement. Assignments by birth certificate, by custody decree, by adoption, and by the acquisition of Longtime Caretaker are Permanent Placements. Permanent Placements insulate Adult and Child from intrusion by former Parents or by the state except as authorized by a Ground for Intervention.

PARA. 10.12 FOSTER CARE WITH TENURE

Foster Care with Tenure is the Permanent Placement of a Child with Adults who wish to care for him but who cannot or choose not to adopt him.

PARA. 10.13 GROUND FOR INTERVENTION

A Ground for Intervention defines circumstances under which the state is authorized to investigate and/or to modify or terminate the legal relationship between a Child and his Parents.

The goal of intervention is to maintain, reestablish, or establish for the Child a Permanent Placement in a family with Autonomous Parents.

ARTICLE 20. STAGES OF INTERVENTION

PARA 20.2 ADJUDICATION

Following a charge of a Ground for Intervention, the court shall provide Parents with an opportunity to be heard both on their own behalf and as representatives of the Child. The court shall determine whether the state has established a Ground for Intervention. If no Ground for Intervention has been established, the court shall dismiss the action.

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PARA. 20.3 DISPOSITION

Following an Adjudication that a Ground for Intervention exists, or following a request by a Parent for a Disposition, the court may appoint independent counsel for the Child, and all the parties shall have the opportunity to be heard as to which Disposition they believe to be in the Child's best interest. The court shall order the Least Detrimental Available Placement.

PARA. 20.4 DEGREE OF INTERVENTION

The degree of coercive intrusion on Family Integrity at Invocation, Adjudication, and Disposition shall be no greater than necessary. Investigations, hearings, trials and appeals shall be conducted as rapidly as is consistent with responsible decision-making and in accord with the specific Child's Sense of Time.[2]

ARTICLE 30. GROUNDS FOR INTERVENTION

The Grounds for Intervention are:

PARA. 30.1 Refusal of Parents to comply with generally applicable immunization, education, and labor laws so far as they apply to their Children.

PARA. 30.2 Commission by a Child of an offense which would be criminal if committed by an Adult.

PARA. 30.3 The request by either or both separating Parents (whether married to each other or not) for the court to determine custody. The court is authorized to determine the Disposition only of those Children about whose custody their Parents do not agree.

PARA. 30.4 The request by a Parent for the court to terminate that Parent's legal relationship to his Child. If only one of two Parents petitions for a termination of rights the Child's custody shall automatically remain with the other Parent.

PARA. 30.5 The death or absence of both Parents or the only Parent, when coupled with their failure to make provision for their Child's custody and care.

PARA. 30.6 A Parent's conviction, or acquittal by reason of insanity, of a sexual offense against his Child.

PARA. 30.7 Serious bodily injury inflicted by Parents upon their Child, or an attempt to inflict such injury, or the repeated failure of Parents to prevent their Child from suffering such injury.

PARA. 30.8 The refusal by Parents to authorize medical care for their Child when

a. Medical experts agree that treatment is nonexperimental and appropriate for the Child; *and*
b. Denial of that treatment will result in the Child's death; *and*
c. The treatment can reasonably be expected to result in a chance for the Child to have normal healthy growth or a life worth living.

PARA. 30.9 The request by a Child's Longtime Caretakers to become his Parents, or their refusal to relinquish him to his Parents or to a state agency. If it is established that there are Longtime Caretakers who request to become a Child's Parents or refuse to relinquish him to his Parents or to a state agency, the Longtime Caretakers shall, except as provided below, be designated as adoptive Parents, or, if they are unwilling or unable to adopt, as Foster Parents with Tenure.

Such Dispositions shall be automatic unless qualified absent Parents demand a Disposition hearing. Absent Parents are qualified to demand such a hearing only if

a. The Child was over 5 years old at the time of Placement with the Longtime Caretakers and had been in the continuous care and control of his Parents for not less than the 3 preceding years; *and*
b. The Child had not been separated from the absent Parents because they inflicted or attempted to inflict serious bodily injury upon him or were convicted, or acquitted by reason of insanity, of a sexual offense against him.

At such a hearing the court shall determine whether the absent Parents are still Psychological Parents[3] of the Child, and whether his return to them would provide the least detrimental alternative. If so, the Child shall be returned to them. If not, the Longtime Caretakers shall be designated as his adoptive Parents or as Foster Parents with Tenure.

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Improved Planning for Children in Foster Care: The Involvement of the Legal System

On August 11, 1980 the National Legal Resource Center for Child Advocacy and Protection began a two year program to help the legal system make a better contribution toward planning for foster children. Among the issues the project is concerned with are:

- the improvement of early judicial screening of cases, to avoid unnecessary out-of-home placements;
- the use of mandatory, family-centered services, including home-based preventative services prior to out-of-home placements and services designed to rehabilitate and reunite natural families;
- the use of dispositional proceedings to develop treatment plans and to facilitate continued parent-child contacts;
- the use of external review proceedings to reduce inappropriate or unnecessarily prolonged foster placements;
- the use of appropriate legal criteria in court procedures to establish permanent out-of-home placement of children who cannot be returned to their parents, including adoption, termination of parental rights, guardianship, and long term foster care;
- the provision of legal counsel for parents, agencies, and children at all stages of proceedings.

The project has several major objectives:

- Prepare a self assessment guide to evaluate the performance of the legal system in foster care planning.
- Prepare a legal practice manual for attorneys.
- Work intensively with local organizations and attorneys in several "target states" to effect reform.
- Offer technical assistance and operate an information clearinghouse.
- Co-sponsor, conduct and participate in national, regional, state and local training programs.

For further information regarding the project, contact:

Mark Hardin, Assistant Director
National Legal Resource Center
for Child Advocacy and Protection
AMERICAN BAR ASSOCIATION
1800 M Street, N.W., Second Floor South Lobby
Washington, D.C. 20036 ●(202) 331-2250